

HARRY BIRKHOLZ

IBLA 82-206

Decided January 25, 1982

Appeal from a decision of the Idaho State Office, Bureau of Land Management, returning location notices without recordation. 3833 (952).

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment--Mining Claims: Abandonment

Under the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2(b), the owner of an unpatented mining claim located after Oct. 21, 1976, on Federal land shall file within 90 days after the date of location of that claim in the proper BLM office a copy of the official record of the notice of location of the claim. This requirement is mandatory, and failure to comply within the time period prescribed must be deemed conclusively to constitute an abandonment of the mining claim.

APPEARANCES: Harry Birkholz, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Harry Birkholz appeals the Idaho State Office, Bureau of Land Management (BLM), decision of December 7, 1981, which returned unrecorded the location notice for the Birkholz Bonanza placer mining claim because it was not filed with BLM within 90 days after the date of location as required by section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2(b).

Appellant states the claim was located August 21, 1981, and recorded in the records of Boise County, Idaho, November 5, 1981. He asserts that thereafter the county recorded asked for return of the

location notice as an error had been made in the recordation. When he later received his copy of the location notice as recorded in the county records, he immediately sent it to BLM where it was received December 4, 1981, after the 90th day following the date of location had passed. He argues that his notice should not be rejected because of the delays caused by the county recorder.

[1] As the notice of location was not filed with BLM within the 90-day period following location of the claim, BLM properly refused to accept the notice of location for recordation. For mining claims located after October 21, 1976, copies of the location notices must be recorded with the proper office of BLM within 90 days after the date of location. 43 CFR 3833.1-2(b). This requirement is mandatory, and where a mining claimant fails to comply therewith, the claims are properly declared abandoned and void. Art Fields, 57 IBLA 142 (1981). This Board has no authority to excuse late filings or to afford any relief from the statutory consequences. Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981).

Appellant may wish to consult with BLM about the possibility of relocating the claim.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Douglas E. Henriques
Administrative Judge

We concur:

Bernard V. Parrette
Chief Administrative Judge

Edward W. Stuebing
Administrative Judge

